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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-342

FEDERAL POWER COMMISSION,
Petitioner,

vs.

CONWAY CORPORATION, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF COMMONWEALTH EDISON COMPANY.

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April 16, 1976.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

Commonwealth Edison Company ("Edison") respectfully requests leave to file *instanter* the within brief *amicus curiae*. The interest of Edison in the matter at bar is as stated in the Statement of Interest in the brief.

While Edison is an electric utility which may be affected by the decision in the case at bar, Edison believed that the present litigation should be left to the parties and, accordingly, did not request leave to file a brief *amicus curiae* at an earlier date. Subsequently, however, other briefs *amicus curiae* were filed raising arguments and alleging facts not placed in issue by the parties. One of those briefs was filed by six municipal corporations which are parties to litigation involving Edison. Upon

learning of the contents of those briefs, Edison promptly undertook preparation of the within brief.

Edison supports the position of the Petitioner, the Federal Power Commission, but does not intend the within brief to be a repetition of arguments already put forth by the parties in this case. Rather Edison believes that its briefs deals, in a manner different from that of the parties, with the respective roles of the federal and State governments in the regulation of electric utilities. Edison's brief also includes information concerning the regulatory process which is not considered in the briefs of the parties. In view of the nature of the case at bar and the arguments urged by the other *amici*, Edison believes that its arguments and information will assist the Court in deciding the case at bar and that Edison should be granted leave to file its brief notwithstanding the lateness of the hour.

Edison was unable to secure the consent of the respondent Conway Corporation to the filing of this brief. Counsel for the Federal Power Commission and for Arkansas Power & Light Company have authorized Edison to state that those parties have no objection to Edison's filing of a brief.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF COMMONWEALTH EDISON COMPANY.

STATEMENT OF INTEREST.

Commonwealth Edison Company ("Edison") is an electric utility that serves customers in Chicago and Northern Illinois. Edison has seven municipal customers which purchase electricity for resale. These sales are subject to regulation by the Federal Power Commission and account for something less than 1% of Edison's total revenues. In this respect Edison is typical of many large investor-owned utilities.

Six Illinois municipalities that purchase electricity from Edison have filed a brief *amicus curiae* in this proceeding. That brief states that the outcome of this case "will likely govern" litigation

between Edison and those municipalities which is now pending before the FPC and the United States Court of Appeals for the District of Columbia Circuit. The decision in this case need not determine the outcome of that litigation.[1]

Edison offers this brief *amicus curiae* because it fears that the briefs of certain of the parties and *amici* in this case tend to create a somewhat simplistic and erroneous view of the relationship between federal and State electric rate regulation. Edison believes that this brief *amicus* will assist the Court in understanding the complexities of the regulatory process and the potential impact of this case upon the electric utility industry.

1. In Edison's case the Commission found, after a complete hearing on the merits, that a price differential was justified on cost grounds. See n. 12, *infra*.

SUMMARY OF ARGUMENT.

Electric utilities are not free to charge whatever rates they choose. State and federal regulatory commissions specify the rates to be charged for sales to ultimate consumers and to resellers, respectively. Differences in statutory authority and regulatory philosophy between the State and federal commissions are likely to produce differences between wholesale and retail rates.

In directing the Federal Power Commission to review rates set by State agencies, the Court of Appeals upset the relationship between State and federal powers as enunciated in the Federal Power Act. In addition, in so directing the FPC, the Court of Appeals was requiring actions which are virtually impossible as a practical matter and which will lead to regulatory confusion. The action of the Court of Appeals is not required by any federal law and it is not required to close any "gap" in the regulation of electric utilities.

The FPC and Arkansas Power & Light Company have ably argued at pp. 10 to 27, and pp. 10 to 17 of their respective briefs that the Federal Power Act does not reach claims of interjurisdictional rate discrimination. Edison concurs in these arguments.

ARGUMENT.

I.

WHOLESALE AND RETAIL RATES DIFFER FOR MANY REASONS BEYOND THE CONTROL OF THE UTILITY.

A. The State-Federal Regulatory Scheme.

Electric utility rates are subject to regulation at both the State and federal levels. In general, State public utility commissions regulate sales to ultimate consumers while the Federal Power Commission regulates sales for resale. Thus, it is often said that the States regulate retail transactions while the FPC

regulates wholesale transactions. This is somewhat misleading however because a single industrial consumer served at "retail" may use many times the electricity purchased by a municipality served at "wholesale". In any event, the rates governing both wholesale and retail sales by an electric utility are regulated and cannot be established or changed without being submitted to the scrutiny of the appropriate regulatory body.

B. The Theory of Utility Rate Making.

The theory of agency rate-making, both on the State and federal level, is relatively simple. The value of the property devoted to public use is ascertained and the rates are set so as to allow a reasonable return on this "rate base" after all expenses have been met. The sum of the reasonable return and the expenses is frequently referred to as the "cost of service".

In practice, of course, rate-making is nowhere near as simple, particularly when a regulatory commission has jurisdiction over only a portion of a utility's rates. In that case the commission must allocate the total rate base and the total expenses between jurisdictional and non-jurisdictional customers. The rates must then be set so as to recover the total cost of service allocable to the jurisdictional customers.

When a regulatory commission has determined the total revenue which a utility is entitled to earn under the jurisdictional rates, the commission must decide what portion of those revenues is to come from each customer. For this purpose customers are usually divided into classes which are served under different rates. Classes may be established on the basis of use characteristics, such as street lighting, space heating, and high voltage delivery, or they may be based on customer characteristics, such as residential, commercial, and industrial.

The rates paid by the different classes of customers are usually different. Sometimes a class of customers pays a low rate, relative to other classes, for obvious reasons. An interruptible customer, for example, pays less for service than a firm customer because the utility can discontinue service to

the interruptible customer during those periods when the demands of firm customers are heavy. Sometimes the reason for a difference in rates depends upon less obvious factors, such as the time of day or the season of the year in which the class of customers makes its heaviest demands on the utility.[2]

At the State level there may be a score of different customer classes with varying degrees of differences between them. At the FPC level the situation may be a bit simpler, but the FPC, too, is called upon to divide customers into classes which are charged different rates.[3] The division of customers into classes is important because when one class of customers pays less, another must pay more since, by law, the total cost of service to all the jurisdictional customers must be met by the jurisdictional rates. It is also a matter of simple economics that the total cost of service must be recovered if the utility is to remain financially viable.

In defining the classes into which a utility's customers are divided, and in determining the rates to be paid by each such class, a regulatory commission must exercise substantial discretion. Frequently that discretion is exercised on non-economic grounds. For example, rates for "lifeline" service to elderly and low income customers have been established by many commissions. The rates for these services are typically below the rates for normal residential service and any revenue deficiencies are made up by other classes of customers. Alternatively, a State commission could set industrial rates at a relatively low level, in order to attract industry to the state, while increasing commercial and residential rates.

Even when a commission tries to be guided by strictly economic factors, however, it must still exercise a great deal of judg-

2. A more extensive discussion of the numerous bases for customer classifications and rate differentials may be found in Bonbright, "Principles of Public Utility Rates" (1961), which also explains in detail the theory of rate making summarized in the text, and Caywood, "Electric Utility Rate Economics" (1972 Ed.) pp. 67, *et seq.*

3. See, *e.g.*, *St. Michaels Utilities Commission* v. *Eastern Shore Public Service Co. of Maryland*, 35 FPC 591 (1966).

ment. A modern electric utility maintains an integrated system of generation, transmissison and distribution facilities. Therefore, cost allocation to classes of customers is not a question of determining what facilities serve what customers, but rather a question of determining what fraction of the total cost of each single facility should be allocated to each customer. There are something over two dozen theories of cost allocation which have been recognized by academic and professional authorities.[4] Moreover, in recent years the whole concept of designing rates on the basis of an allocation of past costs has been questioned and consideration is being given to the view that rates should be set on the basis of the contribution which each class of customers is expected to make to future costs.[5]

C. Differences in State and Federal Approaches to Rate Making.

Clearly then when the parties in the case at bar speak of the cost of service properly chargeable to one or another class of customers, they are talking about a number which is "correct" only in terms of the methodology of the agency making the determination. Two agencies looking independently at the cost of serving the same two classes of customers, such as wholesale and industrial, might well, indeed probably would, arrive at different determinations of the cost of serving each class. They would therefore establish different rates for service to each class.

Regulatory authorities also differ among themselves on an even more basic level than the *allocation* of costs. They differ

4. The National Association of Regulatory Utility Commissioners' "Electric Utility Cost Allocation Manual" (1973) explains the effects of using several different allocation methods and cites earlier NARUC studies comparing additional methods. See also Garfield and Lovejoy "Public Utility Economics" (1964), pp. 138-141. In a recent Illinois Commerce Commission rate case (Commonwealth Edison Co., Docket 59359, 1975) four allocation studies showed returns for large industrial sales ranging from 8.43% to 10.01%. The same studies showed returns for the FPC-established rate for sales to municipalities ranging from 2.85% to 3.83%.

5. The leading decision in this regard is *Re Madison Gas and Electric Company*, 5 PUR 4th 28 (Wisc. Pub. Serv. Com. 1974), although there is also an extensive academic literature. See Kahn, "The Economics of Regulation", Vol. I (1970).

respecting the determination of the *total* cost of service. The FPC and some State commissions, for example, determine rate base on an original cost basis. This means that the book cost of property, less depreciation, is used. Other State commissions are statutorily required to use a "fair value" rate base which requires some determination of the present, as distinct from the original, value of the property.[6] There are innumerable other differences in methodology between the FPC and the States which produce differences in rates.[7]

Yet another reason for differences between wholesale and retail rates is that the Federal Power Commission and State commissions operate in entirely separate procedural frameworks. The Federal Power Act permits rate filings to become effective on 30 days' notice (or immediately with the FPC's permission), subject to the FPC's power to suspend the rates for not more than five months. Rates are typically made effective subject to refund, contingent upon the outcome of hearings. Hearings may, and do, continue for years.

Each State has its own set of procedural rules. Some permit rates to be placed in effect immediately, under bond. Others

6. Some States use fair value without statutory compulsion. A discussion of the differences between fair value and original cost, along with a list of States subscribing to each theory can be found in Priest, "Principles of Public Utility Regulation" (1969), pp. 143-165.

7. The briefs of both Conway and American Public Power Association would have the Court believe that the FPC has been in the forefront of regulatory efforts to cope with inflation, regulatory lag, and other problems of rate-making and has thereby benefitted utilities at customers' expense. In point of fact, those FPC practices generally recognized as beneficial to utilities (such as use of a future test year and "normalization" accounting) were adopted only after State commissions had accumulatd experience with them. See, *e.g.*, FPC Orders 504 and 530, and compare FPC Order 487 with *Southern California Edison Co.*, 100 PUR 3d 257 (Cal. Pub. Util. Com. 1973), or *Rochester Gas and Electric Corp.*, Docket 25595 (N. Y. Pub. Serv. Com. 1971). We would in any event deny that these practices operate to the detriment of customers. The FPC has always determined total cost of service very conservatively and has never adopted such commonly accepted practices as use of a year-end rate base or an attrition allowance.

have developed procedures for emergency or interim rate increases. A variety of other procedures are also in use.

Today, because the FPC and the State commissions regulate separate types of service, neither the federal nor a State agency need be concerned about the effectiveness of rates in the other jurisdiction. There is therefore no effort to coordinate rate increases. Each agency is concerned only with the cost of jurisdictional service, with it determines in its own way, and each sets rates so as to produce revenues adequate only to cover those costs.

II.

THE COURT OF APPEALS' DECISION LIMITS STATE REGULATION OF UTILITY RATES CONTRARY TO THE FEDERAL POWER ACT.

The foregoing discussion of rate-making practices illustrates the variety of reasons, all having legal sanction, which may underlie differences in utility rates. Because rate differentials may be justified, a mere difference in rates does not constitute discrimination; indeed, it does not even constitute a *prima facie* showing of discrimination, *Wisconsin* v. *FPC*, 373 U. S. 294, 307 (1963). The number of possible reasons for differences in rates also renders unworkable the practices suggested in the opinion of the Court of Appeals. Contrary to the view apparently held by that Court, the FPC cannot readily compare jurisdictional and non-jurisdictional rates. Such a comparison would require that, in addition to its normal review of wholesale rates, the FPC perform analysis of some or all of the utility's retail rates.[8] The FPC has no particular expertise in

8. A large utility may have dozens of retail rates, each tailored by the State commission to a particular purpose. While the municipalities in the case at bar have directed their complaints at one particular industrial rate, there is no logical basis for stopping at that point. Not only do the municipalities also claim to compete for non-industrial load, but it would be necessary to study non-industrial rates in order to determine how the State commission allocated costs to industrial service. As the Court of Appeals pointed out, FPC rate cases can become interminable as it is. At the close of 1975, the

(Continued on next page)

performing the latter task. Moreover, what standards would the FPC use in such an analysis? Obviously, wholesale and retail rates can be compared meaningfully only if a consistent set of standards is used. In looking at retail rates, not only is the FPC likely to be unfamiliar in detail with the methodology of the State commission which set those rates, but the opinion of that commission may very well not articulate the social and economic policies which underlie the State commission's decision. In any event, even if the FPC could utilize the State criteria for analytical purposes it would be powerless to use those criteria to analyze wholesale rates unless the FPC were prepared to set wholesale rates in accordance with the appropriate State public utility act instead of the Federal Power Act.

It is equally improper for the FPC to use federal rate-making standards to review State-determined rates. Even if the FPC were to find that the State commission had erred and set those rates too low, all of the parties to this case agree that the FPC would have no power to raise them. Since the FPC cannot change retail rates it can remedy an unreasonable differential resulting from excessively low retail rates only by lowering wholesale rates to the same level. Instead of limiting the effect of the State commission's "error", the FPC would expand it. At the same time, the State commission would be exercising substantial control over federal rates. This is just as improper as federal control over State rates.

Even if the FPC could compare wholesale and retail rates, how often should such comparisons be made? Each time the State rates change? Edison has raised its wholesale rates twice since 1958, once in 1970 and once in 1974. During that period retail rates were raised six times and exceeded wholesale rates for substantial periods. Presumably, under the "price squeeze" theory being urged on the Court, the wholesale rates were dis-

FPC had 979 electric rate cases pending, including rate increase requests of over $600 million (FPC Release 22161, 2/20/76). Add the complication of reviewing retail rates and it is difficult to see how the Commission will be able to meet its workload.

criminatorily low during such periods. Should the FPC have raised those rates to avoid discrimination? Should the Illinois Commerce Commission have refused to raise retail rates to a level above wholesale rates, thereby allowing the FPC to effectively control retail rates even though all the parties agree that the FPC has no power to do so? In addition, what would be the effects of a comparison of particular wholesale and retail rates on a utility's other FPC-regulated rates? Would they be raised to restore jurisdictional revenues to the level determined by the total cost of jurisdictional service and, if so, would that not result in intra-jurisdictional discrimination?

Inescapably, the differences in State and federal procedures dictate that there will be periods when rates will not be the same, no matter how diligently the FPC, the utility, and its customers pursue the matter. As an example, Edison sought wholesale and retail rate relief contemporaneously in the autumn of 1974. While the wholesale rates were placed into effect rather quickly, they are subject to refund and the FPC rate case is still at the hearing stage.[9] The State commission granted relief, in two stages, somewhat later than the FPC, but the State rate case has been over, and the rates no longer subject to refund, since August of 1975. As this experience demonstrates, even a direct attempt to co-ordinate increases in wholesale and retail rates is not likely to succeed.

While the procedural difficulties raised by the Court of Appeals' opinion are substantial, they are overshadowed by the policy considerations ignored by that Court. As the parties have pointed out in their briefs, the Federal Power Act was circumscribed by Congress to insure that the States would retain their right to regulate sales of electricity to ultimate consumers. It is a necessary condition of the Court of Appeals' decision, however, that the FPC review the determinations of State rate-making agencies. A claim of inter-jurisdictional discrimination must be either a claim that the wholesale rate is too high or that the retail rate is too low. Under the Federal Power Act the FPC must examine wholesale rates to insure that they are not too high, even when there is no allegation of discrimination. Therefore, the change in practice mandated by the Court of Appeals must be that the FPC will examine the level of retail rates and determine if they are too low. Effectively, the FPC will be empowered to determine that a State agency had erred, even though there were adequate State-law grounds for that agency's decision. To all practical intents and purposes the FPC would serve as a forum for collateral attacks on the rate-making decisions of State utility commissions. That in itself violates the intent of the Federal Power Act as well as the traditional prohibition on collateral attacks on agency rulings.[10] The Court of Appeals seems to go even further. It seems to suggest that the FPC perform what appears to be a *de novo* review of the retail rates so that even the ordinary presumption of propriety attached to the actions of State agencies, *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55 (1937), is not to be present when the FPC reviews retail utility rates.

We submit that these problems arise because of the Court of Appeals' misconception of the role of the FPC. The Commission has stated that it is prepared to consider the competitive effects of utility rates in situations in which a remedy can be fashioned. Indeed, the Commission has done so for many years. *Georgia Power Co.*, 35 FPC 436 (1966). The Court of Appeals now suggests that the FPC is a forum before which a utility can be required to justify its actions in seeking retail rate increases, and

9. When revenues are collected subject to refund that fact must naturally be noted in financial statements and financing documents. Under some accounting treatments, revenues subject to refund are not includable as income. Typically, revenues collected subject to refund may not be used to meet the interest coverage tests imposed by mortgage indentures.

10. *United States* v. *Jones*, 336 U. S. 641 (1949). It is also contrary to the rule that proof of anti-competitive intent, and of rate discrimination itself, be made by the complainant. The burden of proof is not on the utility when a rate already approved is in issue. *Atlantic Refining Co.* v. *Pub. Serv. Com. of N. Y.*, 360 U. S. 378 (1959).

also the actions of the State body regulating retail rates. Apparently such justification is to be required regardless of whether the rate increases sought are, in the FPC's opinion, economically mandated. This is a perversion of the dual regulatory scheme established by Congress and the States. Congress' expressed preference for State regulation should not be disregarded by using anti-trust theories to turn the FPC into a reviewer of State actions.[11]

III.

THE COURT OF APPEALS IS MISTAKEN IN PERCEIVING A "REGULATORY GAP."

The Court of Appeals reasoned that FPC review of State rate decisions was necessary to avoid a "regulatory gap". This reasoning assumes that there is no authority other than the FPC with the power to consider whether retail rates are too low. In fact, there is such authority—the State regulatory commission itself. The procedure is actually quite common, *e.g.*, *Re Southwest Gas Corp.*, 61 PUR 3d 467 (Cal. Pub. Util. Com. 1965) and cases cited in Priest, *supra*, at pp. 309-324. Intervention by a utility's competitors is not at all unusual in rate cases. See, *e.g.*, *Re Portland General Electric Co.*, 67 PUR 3d 417 (Ore. Pub. Util. Com. 1967). There have been instances in which courts have held that competitors may intervene as of right in order to urge their competitive interests, *Seaboard-Western Airlines* v. *CAB*, 181 F. 2d 515 (D. C. Cir. 1949), although Professor Davis suggests that authorities are few because administrative intervention is so readily allowed competitors. Davis, "Administrative Law Treatise", § 8.11.

11. When a utility rate is set by a State agency, that rate should, in any event, be immune from attack on anti-trust grounds. Utility rates are a matter of significant State interest and in establishing public utility commissions the State legislatures obviously intended to delegate their authority to limit competition. *Parker* v. *Brown*, 317 U. S. 341 (1943), *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773 (1975).

The thought of approaching a State agency for relief should not discomfort wholesale customers. They, themselves, are creatures of the State and their customers are citizens of the State. A typical State rate case will involve separate interventions by several classes of residential customers, commercial customers, industrial customers, retail governmental customers, and so forth. Each of these customers usually argues that the burden of any rate increase ultimately authorized should be placed upon some other class of customers. It would probably be refreshing for the State commission to have the views of an outside party concerning both the allocation and the amount of rate increases. Of more importance, a wholesale customer's appearance before the State commission would allow that body to more effectively consider all the implications of its social and economic judgments.

IV.

THE COMMISSION SHOULD BE SUSTAINED IN ITS DECISION TO EXCLUDE CLAIMS OF INTER-JURISDICTIONAL RATE DISCRIMINATION FROM RATE PROCEEDINGS.

The Federal Power Commission's decision in this case was that rate-making proceedings not be burdened by considerations of inter-jurisdictional rate discrimination. In so doing; the Commission did not say that it would never consider a claim of anti-competitive conduct by a regulated utility.[12] The Commission only stated that it could not provide a remedy for the specific conduct alleged in the context of a rate case. This was a valid exercise of the Commission's discretion regarding the subject matter limitations in a complex and technical proceed-

12. See, *e.g.*, FPC Opinions 681 and 681A *Commonwealth Edison Co.*, Docket E-7578, one of the earliest "price squeeze" cases. The Administrative Law Judge allowed the intervenors to present such evidence of discrimination and anti-competive purpose as they cared to. After a procedurally difficult hearing on the merits, the FPC concluded that an existing rate differential was cost justified. After such early experiences the FPC apparently learned the fruitlessness of the kind of inquiry now ordered by the Court of Appeals and determined not to burden rate cases with such matters.

ing, *Union of Concerned Scientists* v. *AEC*, 499 F. 2d 1069 (D. C. Cir. 1974), *American Airlines* v. *CAB*, 495 F. 2d 1010 (D. C. Cir. 1974), and was clearly the type of action contemplated by this Court in its ruling in *Gulf States Utilities Co.* v. *FPC*, 411 U. S. 747 (1973), that in an appropriate case the FPC may defer complaints of anti-competitive actions, or dispose of them without hearing. The Commission acted as it did because it knows what the Court of Appeals did not readily understand—that attempts to compare wholesale and retail rates would lead to unmanageable proceedings and fruitless conclusions.

Another fact known to the FPC and apparently forgotten by the Court of Appeals is that electric utilities are in no financial condition to reduce retail rates for the sole purpose of harming wholesale customers. The bulk of revenues comes from retail sales. If, like the Court of Appeals, we permit ourselves to "peak ahead into the merits," we find it unlikely that any utility would voluntarily sacrifice revenues today. As Treasury Secretary Simon stated in his statement to the Senate Finance Committee on March 17th of this year:

> A recapitulation of the problems of the electrical power industry may be helpful. When fossil fuel prices started their rapid rise in mid-1973, the consequence for electric utilities, whose rates are regulated, was a shrinkage in the residual cash-flow. This reduced the return to equity and made increasingly difficult the simultaneous (1) maintenance of dividend payments which were needed to continue to attract and hold equity capital, (2) payment of interest on obligations to bond-holders, and (3) carrying out of investment programs to replace existing capacity as well as to add additional capacity needed to meet forecast growth in demand for electric power.
>
> This squeeze on the electric power industry, resulting from what is commonly called "regulatory lag" or the slow adjustment of allowable prices to reflect changed cost conditions, was exacerbated by two other factors: the actual costs of replacement capital were pushed-up by inflation while the allowances for this portion of capital cost embedded in utility rate structures remained unchanged; and interest rates on refunding and new issues of bonds rose to incorporate the inflation premium. For many utility companies the resultant drop in realized return to equity owners was so severe that dividend payments were suspended and/or construction programs were cancelled or suspended.

Fully aware of the economic difficulties facing the electric utility industry and the problems of regulatory lag in rate-making procedures, the FPC was justified in not expanding the scope of the rate case which is on appeal here.

Every proceeding before an administrative agency cannot be a general "bill of peace" which settles all of the disputes between the parties. Subject matter limitations are necessary and proper in the administrative process. In the present case the Federal Power Commission undertook to examine the reasonableness of a set of wholesale rates. It refused to consider an attack on retail rates set by a State agency. In limiting the proceedings to the question of whether wholesale rates are too high, while leaving the parties to any other remedies they may have, State or federal, with respect to the question of whether retail rates are too low, the FPC was engaged in a valid exercise of administrative discretion. It should be sustained.

CONCLUSION.

The decision below upsets the dual system of federal and State regulation of electric utilities and is therefore contrary to the Federal Power Act. It is also an impractical and unreasonable limitation on the administrative discretion of the FPC to establish the scope of rate cases. For these reasons the Court of Appeals should be reversed and the decision of the Federal Power Commission sustained.

Respectfully submitted,

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